

REMARKS

Applicants thank Examiner Egwim for his time and consideration of the present application during the telephonic interview of August 2, 2007 with the undersigned.

During the interview, the publications cited in the outstanding Official Action were discussed. Possible amendments to the claims were discussed.

This amendment is filed along with a Request for Continued Examination.

The application is amended in a manner believed to be consistent with amendments discussed during the interview to place the application in condition for allowance at the time of the next Official Action.

Claims 27, 39, 44 are amended. Support for the amended claims may be found generally throughout the specification, and in particular, for example, at page 2, lines 17-27, page 4, line 23 to page 5, line 17 and page 20, line 11 to page 21, line 2.

Claims 18-26, 41 and 43 are cancelled without prejudice as applicants reserve the right to file one or more divisional applications directed to the cancelled subject matter.

Claims 27-40, 42, and 44 remain pending in the application.

Claims 27-40, 42 and 44 are rejected under 35 USC §102(b) as being anticipated by LAHANAS et al. U.S. 5,304,334 (LAHANAS). This rejection is respectfully traversed.

LAHANAS discloses forming multi-phase emulsions, where each phase is intended to deliver a different ingredient for dermatological or cosmetic uses. See, e.g., column 1, lines 46-57 and column 5, lines 25-45. The multi-phase emulsions are formed by preparing a water-in-silicone emulsion, dispersing a hydrophilic gel into the emulsion, and adding oil or liquid crystal and a perfluoropolyether to the water-in-silicone emulsion with the gel dispersed therein.

LAHANAS fails to disclose forming (1) a composition consisting of a fatty external phase and a gelled aqueous internal phase (i.e., independent claims 27 and 44) and (2) modifying (i.e., claim 27) or mixing (i.e., claim 44) a fatty phase and a gelled aqueous phase to form a water-in-oil emulsion. Thus, LAHANAS cannot anticipate independent claims 27 and 44, and claims 28-40 and 42 which depend from claim 27.

Neither would LAHANAS render obvious the claims. LAHANAS teaches away from the claimed invention, as LAHANAS requires multi-phase emulsions for the purpose of delivering a different ingredient from each phase. Moreover, LAHANAS fails to suggest forming a water-in-oil emulsion as claimed as an intermediate of the multi-phase emulsion.

Therefore, withdrawal of the rejection is respectfully requested.

Claims 27-40, 42 and 44 are rejected under 35 USC §102(b) as being anticipated by VESPERINI et al. U.S. 5,306,498 (VESPERINI). This rejection is also respectfully traversed.

VESPERINI discloses a triple emulsion comprising a continuous gelled aqueous external phase with a water-in-oil emulsion dispersed in the aqueous external phase. The composition is formed by adding an aqueous phase to a fatty phase to obtain the water-in-oil emulsion, and adding the water-in-oil emulsion to a gelled aqueous phase. See the abstract, column 1, lines 50-62 and column 2, lines 25-33.

VESPERINI fails to disclose: (1) forming a composition consisting of a fatty external phase and a gelled aqueous internal phase(i.e., independent claims 27 and 44), and (2) modifying (i.e., claim 27) or mixing (i.e., claim 44) a fatty phase and a gelled aqueous phase to form a water-in-oil emulsion. Thus, VESPERINI cannot anticipate claim 27 or claim 44, and claims 28-40 and 42 which depend from claim 27.

VESPERINI would also fail to render obvious the claimed invention. Modification of VESPERINI to arrive at the claimed invention would destroy the intended purpose of the three-phase emulsion. Moreover, VESPERINI fails to suggest forming a water-in-oil emulsion as claimed as the emulsion to be added to a gelled aqueous phase.

Therefore, withdrawal of the rejection is respectfully requested.

Claims 27-40, 42 and 44 are rejected under 35 USC §102(b) as being anticipated by KELLNER et al. U.S. 6,042,815 (KELLNER). That rejection is also respectfully traversed.

KELLNER discloses ingredients for both water-in-oil emulsions and oil-in-water emulsions. The ingredients include gelling agents. KELLNER provides only one example (Example 1 at Column 22) to illustrate the process of preparing a composition. However, the example is directed to an oil-in-water emulsion (i.e. a composition comprising a fatty internal phase) formed by adding a fatty phase to approximately 64% of an aqueous phase.

KELLNER fails to disclose: (1) a composition consisting of a fatty external phase and a gelled aqueous internal phase of about 60% to about 98% by weight (i.e., independent claims 27 and 44), and (2) modifying (i.e., claim 27) or mixing (i.e., claim 44) a fatty phase with about 60% to about 98% by weight gelled aqueous phase to form a water-in-oil emulsion. As KELLNER fails to disclose every step and feature recited in independent claims 27 and 44, KELLNER cannot anticipate the claimed invention.

KELLNER also cannot render obvious the claimed invention. Although KELLNER mentions water-in-oil emulsions and gelling agents, KELLNER solely discloses a process for preparing an oil-in-water emulsion, i.e., in the Example. The Example includes approximately 64% of an aqueous phase with gelling agents, and KELLNER forms the external phase with a fatty

internal phase. However, KELLNER fails to suggest steps for modifying or mixing the phases to form a water-in-oil emulsion with about 60% to about 98% by weight gelled aqueous phase. Rather, it appears that KELLNER discourages one of ordinary skill in the art to form a water-in-oil emulsions, as KELLNER states that oil-in-water emulsions are preferred for providing a desired feel when applied to the skin or lips. See, e.g., column 20, lines 26-32.

Therefore, withdrawal of the rejection is respectfully requested.

In view of the present amendment to the claims and the foregoing remarks, applicants believe that the present application is in condition for allowance at the time of the next Official Action. Allowance and passage to issue on that basis is respectfully requested.

The Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 25-0120 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17.

Respectfully submitted,

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